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JOINT APPLICATION OF ONCOR	§	PUBLIC UTILITY COMMISSION
ELECTRIC DELIVERY COMPANY	§	BEFORE THE
LLC AND AEP TEXAS INC. TO	§	FILING CLERK
AMEND THEIR CERTIFICATES OF	§	
CONVENIENCE AND NECESSITY FOR	§	PUBLIC UTILITY COMMISSION
A DOUBLE CIRCUIT 345-KV	§	
TRANSMISSION LINE IN PECOS,	§	
REEVES, AND WARD COUNTIES,	§	
TEXAS (SAND LAKE TO SOLSTICE)	§	OF TEXAS

**APPLICANTS' MEMORANDUM SUPPORTING
ORDERING LANGUAGE ON ENGINEERING CONSTRAINT FLEXIBILITY**

TO THE HONORABLE PUBLIC UTILITY COMMISSION OF TEXAS:

COME NOW Oncor Electric Delivery Company LLC and AEP Texas Inc. (together, "Applicants") and file this Memorandum Supporting Ordering Language on Engineering Constraint Flexibility.

Following the Open Meeting discussion on May 23, 2019, Applicants seek to clarify their request for additional flexibility regarding engineering constraints.

Today, the booming oil and gas industry in west Texas presents unique challenges for a developing new electric transmission infrastructure. The sheer pace of infrastructure development in the region—including not just the oil and gas infrastructure but also supporting roads, temporary housing, sand mines, pipelines, distribution lines, and other development—is inconsistent with the regulated CCN process for transmission infrastructure. Too many physical changes occur on the ground between the time a CCN application is prepared and filed, and the time when right-of-way ("ROW") for that project can be acquired.

This problem is often compounded by data limitations. Some of them can occur anywhere in Texas, but all of them are particularly acute given today's pace of infrastructure development in west Texas: the margin of error inherent in aerial imagery; CCN application maps that grow increasingly stale as new development occurs during regulatory review; the inaccuracy of Railroad Commission of Texas data containing companies' reported well and pipeline locations; the discrepancies between tax-roll data and deed records (with respect to both ownership and actual property boundary locations); and the complicated ownership structures—such as multiple,

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geographically diverse recipients of inherited interests, or severed surface and mineral estates with different owners—that are commonplace on many properties in these counties.

As mentioned in the Open Meeting discussion, there are also occasions when a property owner cannot be located, does not respond when outreach occurs, or is simply unwilling to discuss a route modification across their property.¹ When an easement cannot be obtained voluntarily, the State’s condemnation process provides a means through which the ROW can be obtained. This process, contained in Chapter 21 of the Texas Property Code, also provides a means through which an entity can condemn a landowner to acquire necessary ROW, even when a landowner cannot be identified, cannot be located, or does not respond.² There is no similar process in place for obtaining Commission-required landowner consent when a route modification is necessary. For example, it is not uncommon that 20 cousins may have inherited an ancestor’s land. If 19 consent to a route modification, but the final one cannot be located or does not respond, should the utility be required to file a new proceeding with the Commission in the absence of that final consent, delaying a needed project?

Route modifications might be necessary for a number of reasons: a few examples would be when a pipeline or pad site has been constructed since data was acquired for a CCN application, or when Railroad Commission or tax-roll data and the true physical location of a facility are off by what can sometimes be five hundred feet or more. In these situations, a modification of some type must be made to construct the transmission line since condemning costly oil and gas infrastructure is not a desirable alternative. Utilities need flexibility to address these types of situations to allow these projects to be built on time to serve the power needs of the area. As the Commission knows, these needs are largely driven by the oil and gas industry whose infrastructure often creates these engineering constraints.

Applicants appreciate the ability to re-route onto properties of non-noticed, but agreeable, landowners that Chairman Walker’s memo proposes to add back into the Order for this project; it is helpful and necessary in situations where a reasonable modification requires use of a non-noticed property. However, as discussed during the Open Meeting, Applicants believe there is a need for

¹ Cf. 16 Tex. Admin. Code § 22.52(a)(3) (requiring affidavit that a CCN applicant has “*sent* notice by first-class mail to each of the persons listed as an owner of directly affected land on the current county tax roll(s)” (emphasis added)).

² In some instances, this process might entail condemning through notice by publication when a landowner cannot be found.

additional flexibility—with respect to tracts that were sent notice of the CCN proceeding and had the ability to participate in the CCN proceeding—when engineering constraints are encountered and consent to a route modification cannot be obtained. After hearing the Commission’s feedback at the last Open Meeting, the flexibility Applicants respectfully request is as follows:

On properties with oil and gas-related development and without permanent habitable structures that were sent notice of the CCN proceeding in accordance with Commission rules, when an engineering constraint is discovered that requires modification of the Commission-approved route and landowner consent cannot be obtained, the utility may modify the approved route within that property to the minimum extent necessary to avoid the engineering constraint by adhering to the following procedure: (1) the utility will provide notice of the proposed route modification to affected landowners, consistent with CCN application notice requirements; (2) the notice will inform the affected landowners that the proposed route modification will be implemented unless the utility and affected landowners agree on an alternative modification located on their property within 30 days; and (3) the modification must follow good utility practice, result in a reasonably direct path toward the terminus of the line, and not cause an unreasonable increase in cost or delay in the project schedule.

Applicants are grateful for the Commission’s guidance on these issues and look forward to discussing them at the next Open Meeting. Applicants agree to extend the Commission’s deadline for decision in this matter to Friday, June 14, 2019.

Respectfully submitted,

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CERTIFICATE OF SERVICE

It is hereby certified that a copy of the foregoing has been hand-delivered or sent via courier service, email, fax, overnight delivery, or first class United States mail, postage prepaid, to all parties of record in this proceeding, on the 6th day of June, 2019.


